

## **GENERAL TERMS AND CONDITIONS**

### **ACCEPTANCE**

BY DELIVERING THE ORDERED GOODS AND SERVICES, CONTRACTOR AGREES TO THE SPECIFICATIONS, TERMS, AND CONDITIONS SPECIFIED IN THIS CONTRACT AND ANY REFERENCED DOCUMENTS. CONTRACTOR'S ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS ARE EXPRESSLY EXCLUDED FROM THIS CONTRACT AND THE COURT DOES NOT AGREE TO SUCH TERMS OR CONDITIONS. THIS CONTRACT'S TERMS AND CONDITIONS MAY ONLY BE VARIED BY A WRITING SIGNED BY THE COURT'S DULY AUTHORIZED REPRESENTATIVE. CONTRACTOR MAY NOT ALTER, ADD TO, OR OTHERWISE MODIFY THESE TERMS AND CONDITIONS.

### **AUDIT RIGHTS**

Contractor agrees to maintain records relating to performance and billing by Contractor under this Contract for a period of three years after final payment. During the period of time that Contractor is required to retain such records, the Court or its representative may, during normal business hours, inspect and make extracts or copies of such records and other materials for purposes of confirming the accuracy of invoices submitted hereunder.

### **CHANGES**

No change or modification in terms, quantities, or specifications may be made without express authorization in writing from the Court.

### **DELIVERY AND PACKING SLIPS**

Time is of the essence to delivery and any other performance required of Contractor. No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or any other purpose shall be paid by the Court unless it is expressly included on the face of this Contract. Unless stated otherwise in this Contract, the shipping point for all deliveries under this Contract shall be F.O.B. "Destination". Unless otherwise shown on this Contract, on "F.O.B. Shipping Point" transactions, Contractor shall arrange for lowest-cost transportation, prepay and add freight to its invoice, and furnish supporting freight bills over \$25. If delivery is to be made by a carrier, an itemized delivery ticket must be attached to the outside of the package. Each container must be marked with the Contract number, part number and quantity. Any itemized packing slip bearing the Court's Contract number as shown thereon must be left with the goods to insure their receipt.

### **ENTIRE AGREEMENT**

This Contract constitutes the entire agreement and final understanding of the parties with respect to the subject matter hereof and supersedes and terminates any and all prior and/or contemporaneous negotiations, representations, understandings, discussions, offers, proposals, or agreements between the parties, whether written or oral, express or implied, relating in any way to the subject matter hereof.

### **GOVERNING LAW, VENUE**

The formation, interpretation and performance of this Contract shall be governed by the laws of the State of California without regard to its conflict of laws provision. Venue for all litigation relative to the formation, interpretation and performance of this Contract shall be in the City of Bakersfield, California.

### **INDEMNIFICATION**

CONTRACTOR SHALL INDEMNIFY, DEFEND (WITH COUNSEL SATISFACTORY TO THE AOC) AND HOLD HARMLESS THE PURCHASING GROUP MEMBERS NAMED IN THIS MASTER AGREEMENT, AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL LOSSES, COSTS (INCLUDING REASONABLE ATTORNEYS' FEES), LIABILITIES, DAMAGES, AND EXPENSES, INCLUDING INTEREST, PENALTIES AND SETTLEMENT AMOUNTS ENTERED INTO, IN EACH CASE WITH RESPECT TO ANY AND ALL THIRD PARTY CLAIMS CAUSED BY, ARISING OUT OF OR RESULTING IN ANY WAY FROM ANY DEFECT, WHETHER LATENT OR PATENT, IN THE GOODS OR SERVICES PURCHASED HEREUNDER OR FROM ANY ACT OR OMISSION BY CONTRACTOR, ITS AGENTS OR EMPLOYEES, INDEPENDENT CONTRACTORS OR SUBCONTRACTORS. THIS INDEMNIFICATION SHALL BE IN ADDITION TO THE WARRANTY OR OTHER OBLIGATIONS OF CONTRACTOR AND SHALL APPLY WITHOUT REGARD TO WHETHER THE CLAIM, DAMAGE, LOSS, LIABILITY, COST OR EXPENSE IS BASED ON BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY. THIS INDEMNITY SHALL SURVIVE DELIVERY AND ACCEPTANCE OF GOODS OR SERVICES.

### **INFRINGEMENT PROTECTION**

Seller shall hold the Court and its officers, agents, and employees harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, or patented or unpatented invention, article, or appliance furnished or used in connection with this Contract.

### **INSPECTION AND ACCEPTANCE**

Notwithstanding any prior inspection or payments, all goods and services delivered hereunder shall be subject to final inspection and acceptance or rejection by the Court at any time within thirty days after delivery to the Court.

## **INSURANCE REQUIREMENTS**

Contractor shall maintain the following insurance coverage. Contractor is also responsible for its Subcontractors maintaining sufficient limits of the same insurance coverage.

- **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY:**
  - Workers' Compensation insurance or self-insurance indicating compliance with any applicable labor codes, acts, laws or statutes, State or Federal, where Contractor performs the Work.
  - Employers' Liability insurance shall not be less than \$1,000,000 for injury or death each accident.
- **COMMERCIAL GENERAL LIABILITY:**
  - Coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form, with no coverage deletions.
  - The limit shall not be less than \$1,000,000 each occurrence for bodily injury, property damage and personal injury. If coverage is subject to a general aggregate limit, this aggregate limit shall be twice the occurrence limit.
  - Coverage shall: a) By "Additional Insured" endorsement add as insureds Court, its directors, officers, agents and employees with respect to liability arising out of Work performed by or for the Contractor; b) be endorsed to specify that the Contractor's insurance is primary and that any insurance or self-insurance maintained by Court shall not contribute with it.
- **BUSINESS AUTO:**
  - Coverage shall be at least as broad as Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, Code 1 "any auto."
  - The limit shall not be less than \$1,000,000 each accident for bodily injury and property damaged.
- **ADDITIONAL INSURANCE PROVISIONS**
  - Before commencing performance of Work, Contractor shall furnish Court with certificates of insurance and endorsements of all required insurance for Contractor.
  - The documentation shall state that coverage shall not be cancelled except after thirty (30) days prior written notice has been given to Court.
  - The documentation must be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be submitted to:

**Superior Court of California, County of Kern**  
1415 Truxtun Avenue  
Bakersfield, CA 93301
  - A copy of all such insurance documents shall be sent to Court's Contract Negotiator and/or Contract Administrator.
  - Court may inspect the original policies or require complete certified copies, at any time.
  - Upon request, Contractor shall furnish Court the same evidence of insurance for its Subcontractors as Court requires of Contractor.

## **INVOICES, PAYMENT AND SETOFF**

The Court shall have no obligation to pay for any item until one original and two copies of a correct, itemized invoice for the item is received by the Court. Payment is due thirty days from receipt of a correct, itemized invoice. Each invoice shall be printed on Contractor's standard printed bill form, and shall include at a minimum (i) the Contract number, (ii) Contractor's name and address, (iii) the nature of the invoiced charge, (iv) the total invoiced amount, and (v) such detail as is reasonably necessary to permit the Court to evaluate the goods received and the services performed, if any, including without limitation the number of hours worked and the applicable hourly rate. Amounts owed to the Court due to rejections of goods or services or discrepancies in an invoice shall be, at the Court's option, fully credited against future invoices payable by the Court, or paid by Contractor within thirty days from Contractor's receipt of a debit memo or other written request for payment by the Court. The Court shall have the right at any time to set off any amount owing from Contractor to the Court against any amount payable by the Court pursuant to this Contract or any other transaction or occurrence.

## **REGULATIONS AND CONDUCT OF WORK**

- Contractor shall plan and conduct the Work to comply with local, state, and federal government agencies' applicable rules, regulations, codes and/or ordinances to adequately safeguard persons and property from injury. Contractor shall direct the performance of the Work in compliance with reasonable safety regulations and Work practices and with applicable federal, state and local laws, rules and regulations, including but not limited to, "Occupational Safety and Health Standards" promulgated by the U.S. Secretary of Labor and Safety Orders of the California State Division of Occupational Safety and Health (Cal-OSHA). Court may require Contractor's employees to wear approved "hard hats" and also to observe reasonable safety precautions in addition to those in use or proposed by Contractor. Neither the giving of such special instructions by Court nor the adherence thereto by Contractor shall relieve Contractor of the sole responsibility to maintain safe and efficient working conditions.
- In compliance with California Public Utilities Code, Section 465, Contractor agrees to pay its employees the prevailing wages. For purposes of this paragraph, "prevailing wages" shall be deemed to include employer payments, if applicable, for health and welfare, pension, holidays, sick leave, vacation, apprenticeship, or other training programs when required. Public Utilities Code, Section 465(d), provides that the Director of the Department of Industrial Relations shall determine the prevailing wage for custodial or janitorial employees in accordance with the standards set forth in Section 1773 of the Labor Code. Failure to pay the prevailing wage, as determined by the Director of the Department of Industrial Relations shall be cause for the termination of the Contract.
- Contractor shall comply with all applicable state laws, rules and regulations, including, but not limited to, Public Utilities Code 465 and 466, for the performance of the Work to be performed under this Contract.

## **RISK OF LOSS:**

Seller shall bear the risk of loss or damage to the ordered goods until Contractor delivers the goods to the Court's place of business unless a different F.O.B. point is indicated on the face of this Contract. Notwithstanding such delivery, Contractor shall bear the risk of loss or damage to the goods purchased under this Contract in the event of and from the time the Court gives notice of rejection or termination of this Contract.

## **STATUS AS INDEPENDENT CONTRACTOR AND SUBCONTRACTS**

Contractor is an independent contractor and while performing work on or off the Court's premises neither it nor any of its agents or employees shall be considered agents or employees of the Court. Only Contractor and its employees or approved Subcontractors' and their employees will be allowed on Court property. Contractor shall not subcontract or delegate its obligations under this Contract without the prior written consent of the Court.

## **SUBCONTRACTS AND ASSIGNMENTS**

During the term of this Contract, Contractor shall make no subcontract or other assignment without the prior written consent of Court. When consent is granted, it shall not relieve Contractor of any obligation to Court.

## **TERMINATION**

The Court may terminate all or part of this Contract for any or no reason at any time by giving notice to Contractor. Should Court terminate this Contract for convenience, the Court's liability shall be: (a) for standard or off-the-shelf products, a reasonable restocking charge not to exceed ten percent of the purchase price; (b) for custom products, the lesser of (i) a reasonable price for raw materials, components, work in progress, and any finished units on hand, or (ii) the price, set forth in this Contract, per finished unit, after giving effect to any discount the Court would otherwise be entitled to. For termination of any separate services specifically ordered, liability shall be the lesser of (a) a reasonable price for the services rendered prior to termination, or (b) the price for the services. If any hourly or other time-based rate for services is specified in this Contract, such rate shall be used in determining a reasonable price. Upon receipt of a termination notice, Contractor shall, unless otherwise directed, cease work and follow the Court's directions as to work in progress and finished goods.

## **WARRANTIES**

Contractor warrants that all goods delivered shall (a) be free from defects in workmanship, material, and manufacture (including, without limitation, defects which could create a hazard to life or property); (b) be new, not refurbished or reconditioned, unless stated otherwise in this Contract; (c) be of merchantable quality and shall be fit for the purposes intended by the Court to the extent disclosed by Contractor; (d) comply with the requirements of this Contract; and (e) comply with all applicable laws and regulations. Contractor further warrants that all services shall be rendered in a good and workmanlike manner by skilled personnel in compliance with all applicable laws and regulations.